

6792

R. Martin PL. 2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-190038

DATE: May 9, 1978

MATTER OF: Bowne Time Sharing Inc.

DIGEST:

1. Fact that one or more potential offerors may be precluded from competing because of specification requirement does not render specification unduly restrictive of competition if it represents legitimate need of procuring agency.
2. GSA's review of proposed data processing procurements is subject to right of requiring agency to determine its individual needs.

Bowne Time Sharing, Inc. (Bowne) protests the award of any contract under request for proposals (RFP) No. 77-0291 issued by the Social Security Administration (SSA), Department of Health, Education, and Welfare.

The RFP called for fixed price offers to provide, install and maintain in SSA facilities 54 shared logic word processing systems along with necessary software in order to automate production of typed correspondence. In addition to other hardware, the mandatory specifications required that each system be composed of one or more mini-computer central processing units and multiple terminals.

Bowne contends that by specifying a hardware approach to functional requirements, the RFP unduly restricts competition from offerors who would propose a computer time sharing approach. Bowne protested to this Office prior to the proposal due date stating that while it could meet the functional requirements of the SSA, it could not meet the specified hardware requirements. On the proposal due date, SSA had received three timely proposals and is withholding award pending this decision.

SSA states that after extensive analysis it concluded that the on-site shared logic approach to meeting its minimum needs would be most efficient and cost effective. It chose the shared logic approach in the belief that it offered more redundancy in case of equipment failure and the most flexibility and complete control of operations without inhibiting the capability for expansion. It states that the time sharing approach using an off-site central processing unit would present difficulties with regard to on-site back-up in case of equipment failures, SSA's security requirements, privacy standards and productivity because of low speed terminals and the necessary deliveries from the vendor's facility. It further states that an off-site time sharing system might require substantial changes in SSA's present operating procedures.

Bowne denies the validity of these reasons for SSA's determination that its minimum needs can be satisfied only by an on-site shared logic system. Although Bowne argues that the RFP requires multiple terminals but not multiple central processing units and states its belief that this is not redundancy, we are not persuaded that a failure of an off-site central processing unit could be no more inconvenient to SSA than a failure of one of several on-site mini-computers. Bowne further contends its system will meet the SSA security and privacy standards but has not shown that an off-site central processing unit is as secure and tamper-proof as on-site mini-computers. The protester's assertion that its approach offers SSA more flexibility and control and that it requires no change in present or proposed SSA operating procedures are unsupported.

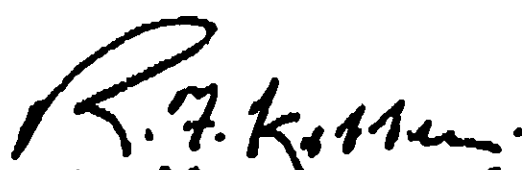
It is well settled that the determination of the minimum needs of an agency and the methods of accommodating them are properly the responsibility of the contracting agency which is best able to draft appropriate specifications. Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. Though the specifications must be drawn so as to maximize competition, this Office will not substitute its judgment for that of the contracting agency unless it is shown by clear and convincing evidence that the agency's judgment is in error and that a contract awarded on the basis of such specifications would unduly restrict competition. Keystone Diesel Engine Company, Inc., B-187338, February 23,

B-190038.

1977, 77-1 CPD 128. The fact that one or more potential offerors may be precluded from competing because of the terms of the specifications does not render the specifications unduly restrictive if they represent the legitimate needs of the agency. 45 Comp. Gen. 365 (1965); Informatics Inc., Reconsideration, B-187435, June 2, 1977, 77-1 CPD 383. Thus, it is not a question whether the specifications restrict competition per se but whether they unduly restrict competition. METIS Corporation, B-181387, January 24, 1975, 75-1 CPD 44. SSA's stated need for an on-site correspondence typing operation for which it obtained adequate competition has not, in our opinion, been clearly shown to have no reasonable basis.

Finally, Bowne argues that the normal procedure for the procurement of "data processing hardware," specifically, a review of the proposed procurement by the Automatic Data and Telecommunications Service (ADTS), General Services Administration (GSA), has not been effected and that this constitutes a violation of Federal Property and Management Regulations (FPMR) § 101-32.203.2. Apparently, Bowne believes that such a review, if required, would resolve the acceptability of the time sharing approach it wishes to propose. GSA informs us that because of considerable confusion among the agencies as to whether particular equipment falls into Federal Supply Group 70, Automatic Data Processing Equipment (ADPE) which is subject to Federal Procurement Regulations (FPR) § 1-4.11 or in some other Federal Supply classification, which is not within the cognizance of ADTS, it is currently reviewing all equipment to determine the proper classification of specific makes and models. Until that review is completed and any appropriate classification standards are modified, word processing equipment of the type involved here must be procured in accordance with procedures for ADPE procurements provided in FPR § 1-4.11. SSA is being requested by GSA to comply with these procedures.

Accordingly, this protest is denied.


Deputy Comptroller General
of the United States